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Legal Records and Historical Gossip:

The Records of the Social Historian

Thomas F. Armstrong

Historians who venture beyond the traditional realms of political or diplomatic history find themselves similarly venturing beyond traditional sources for their history. This has been particularly true of the social historian, who undertakes the elusive task of understanding "history from the bottom up," or history of the "inarticulate." In looking beyond those traditional sources, all manner of evidence is legitimate, subject to the usual rules of verification and professional scrutiny. For the historian tempted to use court records, there are realities with which to cope, but much enlightenment for the persistent. Initially, the court and the court records represent an almost forbidding world.

When it comes to court records, the historian is an outsider looking in, hoping to find evidence, clues, documents that might corroborate evidence from other sources. The documents of courts were not written or recorded for historical use; historians should, however, use them. The language of court records is not the language of the historian; the historian must adopt and then translate that language and the meaning contained in it. The historian will be spending many afternoons in courthouses and in the midst of local, state, and federal court records. So often the historian is alone among the lawyers or law clerks who busily trace land transactions, investigate prior court cases or, as happened more than once, go to the local records room to catch up

on the local gossip. All of this suggests the outsider status. Will lawyers or judges sense a violation of territorial imperative to subject court records to the historians' scrutiny?

How can such court records be used? For some archivists and historians the answer to that question will contain few or no surprises. For others, a brief statement of what the historical enterprise is all about might be in order. Although much attention is given to historical firsts or important events, the fundamental task is the understanding of the human process over time. Who did what first might be important to that task; a dissection of important events might be revealing of the historical process. Ultimately, however, it is not automatically the famous or the first that makes up the essence of history. This is particularly true for social historians. They do not differ from other historians in their attempt to understand development over time; they merely differ in the particular process they wish to understand.¹

Another caveat is in order. Some who use court records find them valuable as sources in themselves. Thus, they develop an understanding of a particular court, a particular case, or even a particular event through the use of court materials. The social historians' use of court materials differs from that. For them court records are useful, but only as one of many sources. The historian must necessarily exhaust all possible sources, and in conjunction with newspapers, manuscripts, business records, other federal or state materials and even material artifacts, the court records are included.

Given that general proposition, the historian, and the subset social historian, is particularly interested in recreating the patterns of individual lives in order to find understanding of the process of human development. But how is that done? The ideal world of the social historian is one in which the vast array of political documentation is somehow transformed into bits and pieces of evidence about feelings, moods, behavior, social activities, or

mentality in the lives of ordinary human beings. Thus, the rich manuscript collections of senators might become voluminous correspondence files from a sharecropper in late nineteenth century Alabama; the records of the United States Bureau of Corporations might be somehow translated into information on the attitudes of workers employed by those corporations. That does not happen. Nor, for the most part, do collections such as those available to political or diplomatic historians contain much that is relevant to the social historians. The exceptions are not only exceptional documents but rare records. Think, for example, of the rich Adams letters and diaries that contain commentary from the several generations of Adamses from John through John Quincy to Charles Francis, Henry, Brooks, and Charles. A historically self-conscious family, they left tremendous insight into the process. The social historian's dream is to find the equivalent in the form of a timber worker's diary or the musings of a young woman of the nineteenth century as she debated over her household chores.

Given that these documents do not generally exist, the social historian is necessarily forced to seek alternatives. Some of these documents are famous because they are widely used by almost all social historians. The manuscript returns of the federal census, including not only population schedules but census schedules for agriculture, manufacturing, and before the Civil War, the separate slave schedules would fall into this category. Included in such census records are numerical biographical sketches, with the listings giving ages, sex, marital status, occupations, kinship patterns, and educational levels. There are, of course, numerous other parallel records such as the assorted licensing reports, or accounts of agency proceedings listing individual transactions or complaints. From private sources come wage records, business ledgers, day books, or even cancelled checks which might be of use.

Perhaps the largest untapped source of social

history material, however, is found in the courts. Court records at all levels can be most useful. State and local court materials can be addressed first since they ultimately have a bearing on the understanding of the historian's interest and the archivist's insistence that such records be maintained.

A historian's introduction to local court records can come quite accidentally, but in a fashion that will prove most useful to both later use and understanding of the documents. While undertaking research on a small Virginia city, for example, the author was searching the minutes of the city council for clues to institutional developments. The city had a mayor and council form of government and so much of the activity involved the mayor as a participant in council affairs. In the minute book, however, the mayor was recording the transactions of the mayor's court, in which he listed charges, evidence and decisions. A first reaction to the inclusion of the mayor's court minutes with the record of the city council would be to think poorly of the mayor for not separating his records more carefully. In the mind of the mayor, however, the court records were a natural part of his duties and one record was closely tied to another. Further consideration indicated that the happenings of the court itself were an important clue to town developments. By contrasting patterns of punishment, a better understanding of the social climate in which the town developed could be gained.²

Such simple but accidental lessons are important, in part, because they force the historian to begin thinking about court records for future research; they also indicate that record keeping is not always neat and packaged and that court records or any other record might appear in most mysterious places. There is, indeed, an overlap of record even if a separation of function. Most importantly, however, the experience is that the court record is but another rendering of the social past and that any historian must consider those materials along with others that

might be discovered.

Court records continued to be frequently consulted after the completion of research on the Virginia towns and a shift in research interests to the social history of middle and coastal Georgia. Earlier experiences indicated that there was no need to separate varied levels of court proceedings too precisely, except to realize just what kinds of cases were brought to which courts. Most useful would be the records of Georgia's inferior courts and the courts of ordinary. After 1868, the local superior court records would also have relevance. As an example, an attempt to understand an outburst of religious enthusiasm called the "Christ Craze of 1889" led to newspapers, census documents, records of churches, and records of the state hospital. Perhaps most revealing of materials, however, was the court record of the trials faced by some of the participants charged with crimes during the revival. Not only did the record document the facts of the case as interpreted by the court, but it also indicated the context in which the religious revival was judged. For example, the local court records included the final judgment of an inquest in which the details of a newspaper account of the proceedings were confirmed and the laconic statement appeared that "Shadrach Walthour, of (Liberty County), did on the 13th of October 1889 come to his death by an injury received on his head in a manner unknown to us." ³ Those same court documents revealed, moreover, patterns of life in the black community of nineteenth century Georgia. In one document, three slaves were brought to trial for trading in corn, rum, baskets, canoes, or mats. The case was revealing in part because the slaves were convicted of illegal trade. More revealing to the social historian was that the slaves had produced and were selling the goods mentioned, including baskets, mats, or canoes. ⁴ While the conviction pattern is important, the manufacture of goods illustrates a dimension of a hidden economy which coexisted with slavery.

An estate settlement from the same county was similarly revealing. In an effort to determine the value of the estate, the executor listed the slave property. That, in itself, is useful to the social historian. Even more useful in the continuing historiographical debate over the status of the black family under slavery, is the pattern of the list. The slaves are listed by families. Separately noted are "Bob's family, Bob, Clarissa (subject to frequent disease), Junior, John plus children Ann, Richard, Robert, Sophia, Rebecca and Ellen." Not only is the family listed, but the names can be taken a step further as clues and an indication of planter-named slaves.⁵ Historians working with the often fragmentary materials on slavery would find such names a contrast to the occasionally listed African naming patterns found in black slave narratives, cemetery records, or the like.

More general studies of coastal life in Georgia required frequent searching of state court materials. A suit against an estate for wages in Liberty County in 1886 revealed the local wage scale as well as the division of labor in the timber industry. Through such a document, it can be discovered that watchmen were paid \$1 per day or the slab roller \$.77. Such daily rates say something, but Sam Osgood, one of the petitioners, worked for \$.07 a log as a chopper and clearly worked on a piece rate system. The blacksmith's demand for \$2.50 per day in back wages or the foreman's request for \$3.00 suggests the hierarchy of wages within the industry, too.⁶

Similarly, the probate records can contain hidden clues to the changing economy of the region. Records of coastal Georgia often included the term "pine lands." Throughout the pre-Civil War period when rice dominated the economy of the Georgia coast, such "pine lands" were frequently mentioned as adjacent to "planting lands." By the 1880s, though, new language appears in the description of pine lands. A probate record from Liberty County's court dated 1886 reads "timber suitable for mill purposes." The very terminology indicates the possible presence of a new

basis for the coastal economy. A later probate record seems to confirm this, when an affidavit in a land dispute notes that one of the disputants "resided at Clary's Mill in Liberty County and was engaged in buying timber for saw mill...." ⁷

Judgment books from the Superior Court of Chatham County parallel those of other coastal counties. One case involved the Lumber Workmen's Association and this confirmed an existence that was only briefly noted in the local press. Another case file included the Constitution and By-Laws of the International Longshoremen, Marine and Transport Workers Association, Local 419. The document would otherwise be a most fugitive source. Coupled with the remainder of the case file is evidence of daily wage rates, death benefits, and injury patterns relating to the timber work of the coast. ⁸

From the Brunswick County Superior Court records, testimony in a case involving a large lumber concern, Hilton and Dodge, helped explain the processes at work in a sawmill operation. An injured worker sought damages for the loss of a hand. In testifying in the case, the worker explained that the saw needed frequent cleaning but that he was not authorized to stop the blade to clean the shingles. He could not do so, because that would have interrupted the work of one of his co-workers. Revealed in the testimony is the way in which work forces were arranged, the relative lack of autonomy at the work place, and important explanations as to the operation of the mill itself. Finally, of course, a judgment in favor of the plaintiff indicated the jury's concern for the individual's work place health. ⁹

These examples of the value of local or state level court records could be expanded considerably. The records are useful but incomplete. For some courthouses, the records of lower courts are either missing or so poorly maintained as to be impossible to use. For other courthouses, the organization into case files makes the historian's task a most laborious one. Since evidence from testimony can appear in many legal contexts, the historian must

necessarily engage in the often time-consuming task of paging through records piece by piece with only a small return in the form of useful evidence.¹⁰

Federal court records have some of the same virtues of the local or state courts and have the advantage of being more complete. That very completeness brings the parallel disadvantage of volume and it takes all of the organizational expertise and collegial patience of an archivist to produce the appropriate materials for historical research. Work described here has involved three or four different kinds of federal court materials. Two of these are neither surprising nor did they produce unusual or surprising kinds of evidence. After the Civil War, for example, the Southern Claims Commission established a series of inquiries into claims for return of property lost during the Civil War. The records indicated patterns of property holding that have been most useful in interpreting late ante-bellum slavery and immediate post-emancipation experiences.¹¹ Correspondence files of the Department of Justice contain letters regarding various post-Civil War cases. Often included in those letters are descriptions of work patterns, housing patterns, or the like. In one piece of correspondence, the writer gives rather complete description of a lumber camp and the accompanying company store where the laborers could use their scrip and coupons. The description is one of a self-contained community in which legal tender seldom circulated, thus reinforcing a dependence of the workers on camp and company.¹²

Such case files or correspondence underscore the need to pay attention to court materials. The rather voluminous records from the federal circuit courts and the files of the bankruptcy courts are also important kinds of records to consider. These records are physically located in the East Point, Georgia branch of the Federal Archives. A case involving the American Naval Stores Company contains, for example, a rather complete description of the process of making turpentine in the forests of

Georgia. It is a process that is also found in occasional handbooks to the industry or in the correspondence of an occasional company record, but both of the latter are fugitive sources, while the court record's description is more readily available.

On occasion a major case file will include a voluminous testimony record that can be most revealing to the social historian. In the records of the U.S. Circuit Court, Western Division of the Southern District, is the case of N.W. Dodge versus L.L. Williams. Involving land disputes and timber rights, the five volumes of typescript testimony were perhaps the single most useful source in reconstructing the lives of timber workers in late nineteenth century Georgia.¹³ The evidence of a Mr. DeLacy contains an overview of the industry itself as he noted upon his arrival in 1875 the absence of turpentine farms or sawmills. Turpentine foremen described the process of building spur railroad lines, developing company towns or lumber camps, and the rationale for the decision making of the company. In the testimony of another supervisor, there is a complete discussion of the work patterns of the laborers hired by the Dodge company. At the same time, testimony of others reveals the larger world in which the timber workers lived. In one cross-examination, a witness underscored the relative isolation of the timber worker world when he exclaimed to the court, "Don't you know those people in that country rarely get a paper. That there is not one of them in ten that gets a paper once a week.... Don't you know...that they get very little information from that direction, but they get a great deal of information from others. The persons know what is going on in the county in which they live." ¹⁴ Revealed in the document is a feel for the timber workers and the oral culture which they possessed.

Such evidence is tremendously useful for the historian. The volume of the circuit court record, however, prevents a thorough immersion into all potentially useful materials. Only the cooperation

of the archivist can help identify those cases which might be relevant because of the nature of the case itself.

Finally, the importance of bankruptcy materials should be mentioned. They are at once a useful and, at the same time, frustrating source of information for the historian. The records relating to the Bankruptcy Act of 1898 housed in the National Archives and Records Service at East Point, for example, are valuable, because contained in the documents declaring bankruptcy were usually revealing bits and pieces of information on work patterns or daily lives. One man's listed personal property included two mules, a horse, ten cows, twelve hogs, but also oxen and wagons and timber tools, suggesting a pattern in which he both farmed and worked timber prior to his bankruptcy. Another filer for bankruptcy noted the "peculiar" character of turpentine and thus helped clarify the process of turpentine production. And yet another timber operator/planter gave testimony to the natural setting of coastal Georgia when he filed for bankruptcy after a devastating hurricane.¹⁵

The difficulty with such potentially useful materials is again their volume. Boxed by case and often still tied by original ribbons, the bankruptcy cases must be unbound piece by piece to be used. Not only is the process laborious, it is a filthy one! Once the file is opened, each document must be unfolded and read through. Most cases included petitions for bankruptcy, vouchers, or newspaper clippings designed to report the proceedings. Many case files do not include the testimony, and thus, the process of unwrapping the documents proves more or less futile. Given the difficulty of using the documents, their utility is somewhat limited. For those bankruptcy files which do include testimony, however, the files are potentially most useful in better understanding the daily routines of otherwise faceless or nameless individuals in the past.

By way of conclusion, a special plea is in order to those readers who are not historians. The records

of the courts, whether they be local, state or federal, are simply legal documents designed to record the process and outcome of a particular case or judgment. These records are inadvertently historical documents that are filled with testimony on not only the case at hand but also much more. They contain vivid and important documentation for lives of individuals, and it is the collective record of those lives that gives meaning to social history. When accessioning those legal documents, keep that inadvertent use in mind. When confronted with the inevitable archival choices of keeping or destroying court records that have outlived their legal usefulness, recall that for the social historian, those records can contain a wealth of information. Before committing the court records to permanent destruction, ask whether the historian has been consulted; ask whether those court records might contain evidence, documentation, or information that is increasingly lost in a society in which letters are replaced by telephone calls and business ledgers by computer tapes. Court records are essential to a study of the nineteenth century past; they become more essential in the study of the twentieth century past as the country moves into the twenty-first century.

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NOTES

1 The literature on social history, both theory and practice, is voluminous. Useful discussions are found in Peter N. Stearns, "Toward a Wider Vision: Trends in Social History," in Michael Kammen, ed., The Past Before Us (Ithaca, NY: Cornell University Press, 1980), 205-230. For critical commentary see Tony Judt, "A Clown in Regal Purple: Social History and the Historians," History Workshop, 7 (1979).

2 Proceedings of the Mayor's Court [Fredericksburg, Virginia], 1821-1837, King Deposit, Alderman Library, University of Virginia, Charlottesville, Virginia.

3 See Liberty County Court Cases, Box 8 F, "Court Cases: Late 1800," in Probate Court, Liberty County Courthouse, Hinesville, Georgia.

4 See "State vs. William A. Fleming," in Liberty County Court Cases, Box 7, "Civil War and Slavery," Ibid.

5 Ibid.

6 See "Case of James A. Papot" in Box 8 F, Ibid.

7 Ibid.

8 "Petition of International Longshoremen's Marine and Transportation Workers Association, Lumber & Timber Handlers Local 419 of Savannah, Georgia," in Judgment File, Judgment Books, 1876-1912, Records Room, Chatham County Courthouse, Savannah, Georgia.

9 Ibid.

10 A useful discussion of available court records from Georgia counties is in Robert Davis, Research

in Georgia (Easley, SC: Southern Historical Press, 1981). The Federal Archives, East Point branch, has prepared a useful listing of their holdings. See "Checklist of Federal Court Records in the Atlanta Regional Archives, (East Point, GA: NARS, 1984), xerox copy. With these and others, the list is a start; records will almost always need individual attention.

11 See Records of the Commissioner of Claims (Southern Claims Commission), 1871-1880 as reproduced on microfilm, National Archives and Records Service, Microfilm Publication M87, 1972.

12 "Source Chronological File, Georgia, August 1882-July 1884," Letters received by the Department of Justice from the State of Georgia, 1871-1884, National Archives and Records Service, Microfilm Publication M996.

13 Testimony in "N. W. Dodge vs. L. L. Williams," U.S. Circuit Court, Western Division of Southern District, Macon, Georgia in RG 21, National Archives and Records Service, East Point, GA.

14 Ibid.

15 Box 9045, Bankruptcy Act of 1898, Records of U.S. District Court of Savannah, RG 21, National Archives and Records Service, East Point, GA.